

Appl. No. 10/748,735
Amendment dated November 2, 2007
Reply to Restriction Requirement of October 4, 2007

Remarks/Arguments

a. Claims 1-15 are pending and are subject to restriction and/or election requirement. In the Office Action dated October 4, 2007 the Examiner indicated that the pending claims are subject to restriction to one of the following inventions under 35 U.S.C. §121:

I. Claims 1-6, drawn to a signal generation power management control system for dynamically adjusting a bias current used by the DAC based on minimal signal requirements of the at least one analog signal.

II. Claims 7-10, drawn to a power management control system for adjusting the control parameters of the DAC, DAC filter, mixer and power amplifier based upon digital protocol received by the DSP.

III. Claims 11-15, drawn to method for managing power to a communication system comprising the steps of controlling a supply bias used by the DAC based upon the MA, noise requirements and intermodulation requirements of the portable communications system.

Applicant has added new claims 16-17, which depend from claim 4. No new matter has been added by these claims. Applicant has also noted that claim 8 should be amended for some formalities, however the present rules of practice apparently do not allow for an amendment to a withdrawn claim, even where that withdrawal, as here, is only provisional, i.e. claim 8 is withdrawn with traverse.

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In view of the comments below, Applicant respectfully requests that the Examiner reconsider the present application and withdraw the restriction / election requirement regarding the pending claims.

b. Pursuant to the requirement under 37 CFR §1.143, Applicant provisionally elects (elects with traverse) the invention defined by claims 1 - 6 and requests reconsideration / withdrawal of the restriction requirement pursuant to the provisions of that section. Applicant respectfully submits that even if *arguendo* claims 1-15 define distinct inventions there is no undue burden on the Examiner under the circumstances and thus the minimum requirements for a proper restriction have not been satisfied.

c. The present application concerns systems and corresponding methods for managing/controlling power use in communication equipment. The application discloses and claims various embodiments of the invention, such as power management control systems (claims 1-6 claims 7-10), and a method for managing power (claims 11-15).

d. The Examiner has concluded that the various embodiments discussed and as claimed are patentably distinct inventions and issued a restriction requirement in accordance with 35 U.S.C. §121 ("If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions") requiring that Applicant make at least a provisional election of the inventions defined by claims 1-6, claims 7-

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10, or claims 11-15. Applicant has complied (electing with traverse claims 1-6) with these requirements in accordance with 37 CFR §1.143 at paragraph b above.

The Examiner concludes that the various groups are related as sub-combinations disclosed as usable together in a single combination and indicates that the sub-combinations are distinct if they do not overlap in scope AND are not obvious variants AND if it is shown that one is separately useable. The Examiner further notes that claims 7-10 have separate utility, e.g., adjusting control parameters of a DAC, DAC filter, mixer, and amplifier based on digital protocol received by DSP and claims 11-15 for controlling DAC supply bias based on MA, noise requirements and IM requirements of the portable system and concludes a different field of search is required and thus restriction is proper.

e. Applicant respectfully disagrees with the Examiner's issuance of a restriction requirement. Applicant notes that 37 CFR 1.142 allows a requirement for restriction to be made at any time before a final action. Even though issuing a restriction requirement under these circumstances is not forbidden, the Examiner must still satisfy the minimum criteria for restriction of invention as outlined in the MPEP. Applicant further respectfully notes that MPEP §803 minimally requires that in order for a restriction to be proper not only must the inventions be independent or distinct, but also there must be a serious burden on the Examiner. Specifically in relevant part, MPEP §803 states:

"If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."

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Even if *arguendo* the separate groupings of the claims represent separate inventions, continued prosecution of the entire application is entirely appropriate, given the present circumstances and a failure of the Examiner to show or support the necessary assertions of undue (serious) burden, which is required to issue and maintain a proper restriction requirement.

While the Examiner alleges that the inventions as grouped above require different fields of search, Applicant respectfully submits that any search for the respective elements of claims 1-6 (and 16) will necessarily result in finding the relevant art for claims 7-10 and 11-15.

Basically the inventions defined by claims 1-6 while differing in scope are variations of the invention defined by claims 7-10 and 11-15 or vice-a-versa. All claims necessarily deal with power management in communications equipment. Additionally and for example, an examination of claim 5 would necessarily find the relevant art for the elements in claim 7 (or examination of claim 7 would find elements of claim 5). Applicant has added new claim 16, dependent on claim 4 to specifically recite the additional features of the power management controller which are analogous to features of claim 7 and clearly a full examination of new claim 16 will reveal any art that is applicable to claim 7. Similarly, Applicant submits that an examination of claim 2 or claim 8 would find relevant art for claim 11 (or vice-a-versa). Furthermore, Applicant has added new claim 17, dependent on claim 4, to recite additional features analogous to those recited in claim 11.

Since the Examiner is responsible for searching for all features of claims 1-6, 16-17 and searching in all relevant fields and applying the resultant art on the merits, there is no

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incrementally serious burden associated with the search as a search of the art for the features of claim 1-6, 16-17 will also find all relevant art for claims 7-10 and 11-15. While the Examiner maintains that a different field of search is required for the different grouping of claims, Applicant having reviewed the various claims within Group I – Group III is puzzled as to how a search for the elements of one Group could possibly overlook the elements of the other Groups.

In view of the above comments, Applicant respectfully submits that continuing prosecution on the merits for the entire set of claims is not an incrementally serious burden. Thus in view of the lack of or any showing of or reasoned support for some serious burden, Applicant respectfully submits that the restriction requirement in this instance is clearly improper.

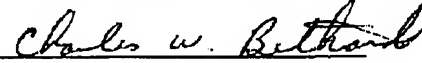
Given the absence of serious incremental burden and that the inventions of the separate claims are variations of other claims, Applicant requests that the Examiner reconsider and withdraw this restriction requirement and continue the examination of the application and pending claims 1-15 and 16-17 on the merits.

The Application as originally filed paid for 20 claims with 3 independent claims. Upon entry of this amendment, there will be 17 claims, including 3 independent claims, pending and thus no additional claim fees are due or payable.

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Although it is not anticipated that any fees are due or payable since this response is being timely filed within the allowed 1 month time period and no other fees appear to be due or payable, the Commissioner is hereby authorized to charge any fees that may be required or credit any overpayments to Deposit Account No. 50-3435.

Respectfully submitted,


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